IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 55 OF 2005

Smt. Filomena alias Meena
Vargese, r/o H.No.388,
Cortalim, Salcete, Goa. ... Applicant

versus

Shri Anthony Mendes
R/o H.No.290, near
Railway Station, Calata
Majorda, Salcete, Goa. ... Respondent

Ms. Susan Linhares, Advocate for the Applicant under Legal Aid Scheme.

Mr. V. Pangam, Advocate for the Respondent under Legal Aid Scheme.

CORAM : N. A. BRITTO, J.

DATE : 9TH SEPTEMBER, 2005.

ORAL JUDGMENT

By this Petition, the applicant assails the Order dated 3-2-2005 of the learned Sessions Judge, South Goa, Margao, in

reducing the maintenance from Rs.1000/- per month to Rs.300/- per month.

2. The applicant-wife, a widow, married the respondent-husband, a divorcee on 22-9-1999 and after that they stayed together for about a year. It was the case of the applicant that on or about 4-5-2001, the respondent without any cause or reason drove her away from the matrimonial house and also forced her to take away the articles brought by her after preparing a list in the presence of her family members. The applicant with her application dated 9-7-2001 approached the learned J.M.F.C., Margao, claiming maintenance of Rs.2000/- per month.

3. The learned J.M.F.C., Margao, by her Order dated 12-1-2004 ordered the respondent to pay maintenance of Rs.1000/- per month from the date of the application. In making the said Order, the learned J.M.F.C. observed that the applicant had failed to prove that the income of the respondent was Rs.8000/- per month. At the same time, the learned J.M.F.C. held that the certificate issued by the employer of the

respondent showing that respondent's salary was Rs.1,500/- was not proved by the respondent. However, but since the respondent had admitted that his monthly salary was Rs.1,500/- per month, the learned J.M.F.C. proceeded to award to the applicant an amount of Rs.1000/- per month.

4. The learned Sessions Judge, however, held that the respondent had proved that his monthly income was Rs.1,500/- since it was shown on the salary certificate produced by the respondent at Exh.14. The learned Sessions Judge also noted that the respondent had also a mother to maintain and considering that the respondent had only monthly income of Rs.1,500/- and a mother to look after, proceeded to reduce the amount of maintenance from Rs.1000/- to Rs.300/- per month.

5. The first objection taken by Mr. V. Pangam, the learned Counsel appearing on behalf of the respondent is that the learned J.M.F.C. could not have granted maintenance exceeding Rs.500/- since when the application was filed on 9-7-2001 the ceiling of Rs.500/- was still existing in Section 125 of the Code of Criminal Procedure, 1973(Code, for short).

Mr. Pangam submits that the words "not exceeding Rs.500/- in the whole" came to be deleted only w.e.f. 24-9-2001 and, therefore, the learned J.M.F.C. when she passed the Order dated 12-1-2004 ought to have considered that at the time of the filing of the application there was an upper limit of monthly allowance of Rs.500/- per month which could be granted. Mr. Pangam, therefore, submits that looking from that angle, the Order of the learned Sessions Judge could not be faulted.

6. I am not inclined to accept the said submission of Mr. Pangam, the learned Counsel. The learned Sessions Judge has not decreased the amount awarded by the learned J.M.F.C. on that count but he has decreased the amount on account of other reasons, for which I have already made reference. It is true that on the date the application under Section 125 of the Code was filed by the applicant on 9-7-2001 the words "not exceeding Rs.500/- in the whole" were on the statute book but the fact remains that when the Order was made by the learned J.M.F.C. on 12-1-2004 the said words were deleted by Parliament and being so there was no ceiling in Section 125 of the Code to which the learned Magistrate had to restrict to and at his discretion he had to award the maintenance

without any ceiling and depending on the facts and circumstances of the case. The learned Magistrate was right in applying the law which was in force at the time of passing the Order.

7. Mr. Pangam, the learned Counsel next submits that the amount awarded by the learned J.M.F.C. was exhorbitant considering that the salary of the respondent was Rs.1,500/- per month and the respondent had also a mother to look after.

8. On the other hand, Ms. Susan Linhares, the learned Counsel appearing on behalf of the applicant has submitted that the learned Sessions Judge ought not to have interfered with the discretion exercised by the learned J.M.F.C. in awarding monthly allowance of Rs.1000/- which she had done after taking into consideration the facts and circumstances of the case and inspite of the fact that the respondent had failed to prove that his monthly salary was Rs.1,500/- per month.

9. Considering the facts proved in the inquiry, in my view, the learned Sessions Judge was not at all justified in exercising his revisional jurisdiction and decreasing the amount of maintenance allowance ordered to be paid by the learned J.M.F.C. If, the respondent had a mother to look

after, the said mother of the respondent had also two other able sons, who were examined by the respondent in support of his case, who could look after the said mother. Once it was held that the respondent had failed to prove that his income was Rs.1,500/- per month there was no question of the learned Sessions Judge having come to the contrary conclusion without giving reasons why the said finding of the learned J.M.F.C. was wrong. It is true that the applicant had failed to prove that the respondent's monthly salary was Rs.8000/- per month. Likewise, the respondent too had failed to prove that his monthly salary was Rs.1,500/- per month, as rightly held by the learned J.M.F.C. Indeed, the respondent had failed to prove the said certificate produced by him in support of proof of his income. Nevertheless his was a case where it was admitted by the respondent that he was working for almost 10 years. It was also admitted that after the marriage of the applicant with the respondent, the respondent had spent about Rs.1,25,000/- in building 3 rooms of the house. That would not have been possible in case the salary of the respondent was a mere Rs.1,500/-. The story that the respondent had taken a loan to build the said 3 rooms has been rightly rejected by the learned J.M.F.C. in para 9 of the Order. The learned J.M.F.C. had also taken note of the fact that the respondent had also got married for the second time. Considering the facts, in my view, the

award of maintenance of Rs.1000/- per month to the applicant could not have been said to be exhorbitant.

10. In the light of that, the Order of the learned Sessions Judge dated 3-2-2005 is hereby set aside and that of the learned J.M.F.C. dated 12-1-2004 is restored. Application allowed with no order as to costs.

N. A. BRITTO, J.

RD.